

APPEAL NO. 023011
FILED JANUARY 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 6, 2002. The hearing officer resolved the disputed issues by deciding that the compensable injury the respondent (claimant) sustained on _____, includes the MRI findings of the right knee dated April 5, 2002: (1) Maceration of the posterior horn of the medial meniscus with chondromalacia in the medial femoral condyle. (2) Possible chronic tear of the anterior cruciate ligament; and that the claimant had disability as a result of her compensable injury of _____, beginning June 26, 2002, and continuing through the date of the CCH. The appellant (carrier) appealed. No response was received from the claimant.

DECISION

The hearing officer's decision is affirmed.

We do not agree with the carrier's assertion that *res judicata* bars the hearing officer's determinations on the issues of whether the compensable injury includes the MRI findings of the right knee dated April 5, 2002, and disability. The prior CCH was held on May 8, 2002, and the issues at that CCH were whether the claimant sustained a compensable injury on _____, and whether the claimant had disability resulting from the injury sustained on _____, and if so, for what period. The hearing officer held the record open until May 15, 2002, so that she could review the MRI report of April 5, 2002. The hearing officer issued a decision on May 16, 2002, in which she found that the claimant sustained an injury in the form of a right knee sprain in the course and scope of her employment on _____, and that due to the claimed injury of _____, the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage beginning January 4 and continuing through January 12, 2002. The hearing officer also found that the claimant failed to prove that her inability to obtain and retain employment at wages equivalent to her preinjury wage beginning January 14, 2002, and continuing through the date of the CCH was a result of the claimed injury of _____. The hearing officer concluded that the claimant sustained a compensable injury on _____; that the claimant had disability from January 3 through January 12, 2002; and that the claimant did not have disability from January 14, 2002, through the date of the CCH. The parties represented that the May 16, 2002, CCH decision was not appealed.

We note that at the May 8, 2002, CCH there was no issue regarding the extent of the compensable injury and the hearing officer's finding that the claimant sustained an injury in the form of a right knee sprain did not expressly limit the compensable injury to only a right knee sprain. In addition, as was pointed out in a medical report dated August 7, 2002, and introduced at the November 6, 2002, CCH, in a severe sprain, ligaments may be completely torn. Based on the MRI findings and physical

examination, the claimant was diagnosed on June 26, 2002, with a torn medial meniscus and a tear of the anterior cruciate ligament, which the claimant's doctor stated in the August 7, 2002, report are a direct result of "this injury," referring to the compensable injury of _____.

The hearing officer's decision of May 16, 2002, decided the disability issue only to the date of the CCH on May 8, 2002. In the current decision from the November 6, 2002, CCH, the hearing officer addresses disability for the period after the May 8, 2002, CCH. Based on the claimant's testimony and on the reports of the claimant's doctor, the hearing officer found that due to the claimed injury of _____, the claimant was unable to obtain and retain employment at wages equivalent to her preinjury wage beginning June 26, 2002, and continuing through the date of the CCH. In Texas Workers' Compensation Commission Appeal No. 971750, decided October 10, 1997, the Appeals Panel noted that a determination that there is, or is not, disability for a particular time frame is not *res judicata* of that issue throughout the potential 104-week temporary income benefits period, and that an injured worker can move in and out of disability over time.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations on the disputed issues at the November 6, 2002, CCH, are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge